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5 Attorney for Plaintiffs

6  
7 UNITED STATES DISTRICT COURT

8  
9 DISTRICT OF NEVADA

10 RITTVO INVESTMENT FUND LLC 4 d/b/a  
11 Rittvo Family Investments LLC 4; RITTVO  
12 INVESTMENT FUND LLC 3 d/b/a Rittvo  
13 Family Investments LLC 3; RITTVO FAMILY  
14 LLC 3 d/b/a Rittvo Family Investments LLC 3;  
15 GASTWIRTH FAMILY TRUST; and JASON  
16 M. GASTWIRTH, in his capacity as Trustee of  
17 Gastwirth Family Trust,

Case No. 2:23-cv-00240-APG-DJA

**UNNOPOSED MOTION TO EXTEND  
DISCOVERY PERIOD**

Plaintiffs,

vs.

POMP & WHIMSY, INC.; NICOLA NICE;  
TODD GALLOPO; NORI-ANN DE LA  
CRUZ; DOE INDIVIDUALS 1-20; and ROE  
BUSINESS ENTITIES 1-20, inclusive,

Defendants.

**UNNOPOSED MOTION TO EXTEND DISCOVERY PERIOD**

Pursuant to LR IA 6-1, Plaintiffs<sup>1</sup> certify that this is the second motion to extend time to take discovery. Plaintiffs respectfully move the Court to extend the discovery period by an

<sup>1</sup> The Plaintiffs are Rittvo Family Investments LLC 4, Rittvo Family Investments LLC 3, Gastwirth Family Trust, and Jason M. Gastwirth, in his capacity as Trustee of the Gastwirth Family Trust (collectively “Plaintiffs”).

1 additional sixty (60) days for the following reasons. **All parties to this action consent to the**  
2 **extension sought herein.**

3 **I. BACKGROUND**

4 This case was originally brought as a straightforward breach of contract dispute, and was  
5 assigned an expedited discovery period of 120 days, expiring on July 22, 2023. ECF Nos. 1, 17.  
6 During the Defendants' depositions, however, preliminary evidence was uncovered that, in  
7 Plaintiffs' estimation, gave rise to veil-piercing/"alter-ego" liability on the parts of the individual  
8 Defendants Nicola Nice, Nori Ann De La Cruz and Todd Gallopo. ECF Nos. 22 at 3-4, 22-3. Upon  
9 first learning this new information, Plaintiffs promptly moved to amend their Complaint to add a  
10 veil-piercing claim against the individual Defendants. ECF No. 22. Magistrate Judge Albregts  
11 granted Plaintiffs leave to file their Amended Complaint on December 14, 2023, recognizing that  
12 Plaintiffs' "prompt amendment was diligent and demonstrates good cause under Rule 16(b)(4)." ECF  
13 No. 39.

14 The Court then granted summary judgment in Plaintiffs' favor on their breach of  
15 contract/personal guarantee claims against the Defendants, and denied the Defendants' cross  
16 motion for summary judgment, leaving Plaintiffs' veil-piercing cause of action the only remaining  
17 live claim in the case. ECF No. 46.

18 Plaintiffs then sought leave to conduct limited additional discovery concerning their veil-  
19 piercing claims. On February 28, 2024, Magistrate Judge Albregts granted Plaintiffs an additional  
20 sixty (60) days to conduct discovery on their veil-piercing claims. ECF Nos. 48, 49. This extended  
21 discovery period expires on April 29, 2024. ECF No. 48.

22 In granting Plaintiffs leave to conduct additional discovery relating to their veil-piercing  
23 claims, on the issue of whether Plaintiffs' proposed veil-piercing discovery requests would "lead  
24 to relevant evidence," Magistrate Judge Albregts noted "I don't hear any argument that it's not

1 going to. And, in fact, *I think it probably will lead to relevant evidence....*" ECF No. 49 at 22  
 2 (emphasis added). Magistrate Judge Albregts further cautioned the parties that if another discovery  
 3 dispute arose in the case, the losing party to such motion would likely be required to pay the  
 4 opposing side's attorney's fees:

5 And if you guys can't resolve the disputes and it comes before me,  
 6 I am very inclined to make whoever loses those disputes pay  
 7 sanctions in the form of attorney's fees for the costs of having to  
 8 bring the discovery motions. ... And so if you come back before me  
 9 on discovery disputes in these next 60 days, whoever loses that after  
 10 I review it is probably going to be paying the other side's attorney's  
 11 fees.

12 ECF No. 49 at 25-26.

13 Plaintiffs promptly propounded written discovery related to their veil-piercing claim on  
 14 Defendants on March 1, 2024. After Plaintiffs granted Defendants' requested extension of time to  
 15 respond, Defendants provided preliminary discovery responses on April 8, 2024. Plaintiffs'  
 16 counsel promptly outlined the deficient and incomplete nature of Defendants' discovery responses  
 17 in an April 10, 2024 letter to defense counsel, and conducted a Rule 37 telephonic discovery  
 18 conference with Defendants' counsel on that same date in an attempt to resolve the discovery  
 19 dispute.

20 The discovery dispute was not resolved at the conference. Rather, Defendants' counsel  
 21 admitted to having failed to produce complete responsive documents, and informed Plaintiffs'  
 22 counsel that additional responsive documents would be forthcoming in future "rolling  
 23 productions." Defendants additionally objected to producing any of the individual Defendants'  
 24 (Nice, De La Cruz and Gallopo) requested financial information (which would be directly relevant  
 25 to whether or not they improperly siphoned money from Pomp & Whimsy for their own personal  
 26 use or commingled corporate assets with their own, thereby giving them "alter-ego" liability).

1 Since the Rule 37 conference, Defendants have made two additional rolling productions,  
2 but have still not fully responded to Plaintiffs' supplemental discovery requests. And the  
3 responsive documents that Defendants have produced raise more questions than answers, and will  
4 require follow up written discovery, third-party subpoenas and depositions.

5 For example, Pomp & Whimsy's bank statements produced in discovery reveal that, during  
6 the timeframe applicable to Plaintiffs' veil-piercing claim, Defendants Nice and De La Cruz have  
7 moved approximately \$258,000.00 from Pomp & Whimsy to a company called THINK  
8 Conservatory, which, on information and belief, Nice and De La Cruz also own, have an ownership  
9 interest in, and/or manage. It is highly improbable that (1) Pomp & Whimsy, a very small startup  
10 company that apparently never even made it off the ground could have incurred \$258,000.00 in  
11 alleged "consultancy services" from its own founders' other company—THINK Conservatory, or  
12 (2) actual legitimate services were rendered by THINK Conservatory to Pomp & Whimsy that  
13 have a value anywhere near \$258,000.00. Indeed, this amount is nearly 65% of the principal  
14 amount of debt that Pomp & Whimsy owes to Plaintiffs—Pomp & Whimsy's largest creditor.

15 Defendants have not yet produced any documents that illustrate why such exorbitant sums  
16 were paid to THINK Conservatory. Plaintiffs have also served a third-party subpoena on THINK  
17 Conservatory for information relating to its services allegedly provided to Pomp & Whimsy.

18 Additionally, Pomp & Whimsy's bank statements reveal that large sums of money were  
19 regularly paid out of Pomp & Whimsy's account to unknown recipients through "Bill.com."  
20 Defendants have yet to produce any documents explaining who the recipients of these payments  
21 were or why they were made. While the parties are engaging in Rule 37 discussions to attempt to  
22 resolve these disputed discovery items, a motion to compel may be required.

1           Moreover, Pomp & Whimsy's bank records make it apparent that an additional deposition  
 2 of Pomp & Whimsy, Nice and/or De La Cruz will be required to obtain additional information  
 3 related to the transactions in questions.

4           In sum, numerous discovery issues and disputes have arisen during the 60-day veil-piercing  
 5 discovery period provided by Magistrate Judge Albregts.<sup>2</sup> As such, additional time is needed for  
 6 Plaintiffs to be able to complete discovery on its veil-piercing claims. Plaintiffs need additional  
 7 time to (1) serve third-party discovery, (2) serve additional written discovery on Defendants to  
 8 follow up on ambiguous transactions disclosed in Defendants discovery responses, and (3) resolve  
 9 Defendants' failure to respond to numerous discovery requests by filing a motion to compel if  
 necessary.

10          Plaintiffs therefore request that they be granted an additional 60 days, or until June 28,  
 11 2024 to complete discovery in this matter. While the Defendants may dispute the factual basis for  
 12 the extension set forth above, **Defendants' counsel has confirmed that Defendants consent to**  
 13 **the requested extension of an additional 60 days.**

14          II.       MEMORANDUM OF POINTS AND AUTHORITIES

15          Pursuant to LR 26-3,

16          A motion or stipulation to extend any date set by the discovery plan,  
 17 scheduling order, or other order must, in addition to satisfying the  
 18 requirements of LR IA 6-1, be supported by a showing of good cause  
 19 for the extension. A motion or stipulation to extend a deadline set  
 20 forth in a discovery plan must be received by the court no later than  
 21 21 days before the expiration of the subject deadline. A request  
 22 made within 21 days of the subject deadline must be supported by a  
 23 showing of good cause. ... A motion or stipulation to extend a  
 24 discovery deadline or to reopen discovery must include:

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2          <sup>2</sup> Magistrate Judge Albregts has now recused himself from this matter because he presided over a settlement  
 conference between the parties on April 12, 2024. ECF No. 55. A settlement was unable to be reached at  
 the conference.

- (a) A statement specifying the discovery completed;
  - (b) A specific description of the discovery that remains to be completed;
  - (c) The reasons why the deadline was not satisfied or the remaining discovery was not completed within the time limits set by the discovery plan; and
  - (d) A proposed schedule for completing all remaining discovery

**A. Statement specifying the discovery completed to date.**

As detailed above, Plaintiffs promptly propounded written discovery relating to their veil-piercing claims on March 1, 2024. Defendants provided objections and incomplete responses on April 8, 2024. The parties participated in a Rule 37 discovery conference on April 10, 2024. Defendants have since made supplemental productions of documents, but have still failed or refused to respond to all of the discovery requests. Plaintiffs may need to file a motion to compel to resolve these issues.

**B. A description of the discovery that remains to be completed.**

Plaintiffs have recently served a document subpoena on third-party THINK Conservatory, and are waiting on responsive documents to be produced. Motion practice may be required to compel THINK Conservatory to fully comply with the subpoena. Plaintiffs also need to propound supplemental written discovery requests on Defendants to request further information regarding questionable transactions reflected in the account statements that Pomp & Whimsy recently produced in discovery, and need to take the follow up depositions of Pomp & Whimsy, Nice and/or De La Cruz to inquire about ambiguous bank transactions reflected in the account statements that Pomp & Whimsy recently produced in discovery.

1           **C. Reasons why this remaining discovery cannot be completed during the remaining**  
 2           **discovery period.**

3           Upon initially being granted an additional 60 days to conduct veil-piercing discovery,  
 4           Plaintiffs immediately propounded supplemental discovery requests on Defendants on March 1,  
 5           2024. Defendants provided incomplete responses on April 8, 2024, and are still providing “rolling  
 6           productions” of additional responsive documents at the present time. The current discovery period  
 7           ends in a few weeks on April 29, 2024. Due to the Defendants’ failure to provide timely and  
 8           complete responses to Plaintiffs’ supplemental written discovery requests, there is simply not  
 9           enough time left in the discovery period for Plaintiffs to finish taking discovery on their newly-  
 10          added veil piercing claim. This is further compounded by the fact that Plaintiffs’ counsel Tarak  
 11          Anada is starting a multi-week trial in New Orleans, Louisiana on April 16, 2024 that is expected  
 12          to last until the end of April.<sup>3</sup>

13           **D. There is good cause to further extend the discovery period.**

14           “The good cause analysis turns on whether the subject deadlines cannot reasonably be met  
 15          despite the exercise of diligence.” *Stamler v. Pro. Trucking, Inc.*, No. 2:22-cv-02023-JAD-NJK,  
 16          2023 U.S. Dist. LEXIS 220980, at \*3-4 (D. Nev. Dec. 8, 2023) (citing *Johnson v. Mammoth*  
 17          *Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)). “The required showing of diligence is  
 18          measured by the conduct displayed throughout the entire period of time already allowed.” *Id.*

19           Here, the Plaintiffs diligently propounded written discovery on the Defendants  
 20          immediately upon Magistrate Judge Albregt’s ruling to permit additional discovery on Plaintiffs’  
 21          veil-piercing claims. Because Defendants have still not provided complete discovery responses  
 22          (which may necessitate a motion to compel), and the partial document production they did make

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23           <sup>3</sup> *Anderson, et al. v City of New Orleans, et al.*, No. 2000-7489, Div J, Sec. 15, Civil District Court, Parish  
 24          of Orleans, State of Louisiana.

1 raises numerous additional questions that need to be followed up on with additional written  
 2 discovery, third-party subpoenas and depositions, the current discovery deadline cannot  
 3 reasonably be met despite Plaintiffs' diligence.

4 **E. A proposed schedule for completing all remaining discovery.**

5 Plaintiffs propose that the April 29, 2024 discovery deadline as well as the other deadlines  
 6 contained in ECF No. 48 be extended by 60 days. These deadlines include:

- 7 • Current discovery cut-off of 4/29/24;
- 8 • Current dispositive motion deadline of 6/28/24;
- 9 • Current joint pretrial order deadline of 7/29/24 (or 30 days after decision on dispositive  
 motion).

10 **III. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully move the Court to extend the discovery  
 12 period by an additional sixty (60) days for the following reasons. **All parties to this action consent**  
 13 **to the extension sought herein.**

14 Respectfully submitted,

15 JONES WALKER LLP

16 /s/ Tarak Anada

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26 *Attorneys for Plaintiffs*

27 IT IS SO ORDERED:

28   
 29 Layna J. Zouchal  
 30 UNITED STATES MAGISTRATE JUDGE

31 DATED: April 16, 2024